



NATIONAL HEADQUARTERS
CIVIL AIR PATROL
UNITED STATES AIR FORCE AUXILIARY
MAXWELL AIR FORCE BASE, ALABAMA 36112-6332

25 April 2002

MEMORANDUM FOR NATIONAL EXECUTIVE COMMITTEE

FROM: NHQ/GC

SUBJECT: FAA Exemptions

1. As a result of a number of inquiries from CAP members and a general recognition that the existing FAA exemptions do not cover all of the flight activities CAP is now involved in, and with the concurrence of the National Commander and the Executive Director, in June, 2001 I submitted to the FAA a petition for exemption to Federal Aviation Regulations (FAR) Section 61.113(a) and FAR Section 119.1(a)(1) and modification of our existing exemption to FAR 61.113(e) (Attachment 1).

a. The petition asked the FAA to allow CAP to reimburse private pilots for all Air Force assigned missions, and not just for "search and locate" missions. The petition included a specific request to allow private pilots to carry passengers or property on an Air Force assigned mission and be reimbursed for the expenses incurred by the pilot.

b. The petition asked the FAA to allow CAP to fly CAP and AFROTC cadet orientation flights without the need for an operator certificate (Part 135 certificate). This is required because cadet orientation flights are not specifically covered in the current exceptions to the operator certificate requirements.

c. The petition asked the FAA to determine that Federal money appropriated to the Air Force specifically for CAP does not constitute "compensation or hire" or "commercial operation" under the applicable FARs ("A" missions). It also asked the FAA to determine that money received from state or local governments pursuant to an MOU that confers Air Force assigned mission status does not constitute "compensation or hire" or "commercial operation" under the applicable FARs (reimbursed "B" missions).

2. The FAA responded to our petition in a letter dated March 19, 2002 (Attachment 2). In addition to extending our existing Section 61.113(e) exemption for another two years, until May 31, 2004, the FAA gave us a partial grant of exemption.

a. The FAA denied our request to be able to reimburse private pilots for missions other than search and locate, saying that granting the request "would not be in the public's interest." They acknowledged that other missions may consist of FEMA and American Red Cross disaster assistance missions, and FAA and State and local government support missions; and that while

performing these missions, CAP may occasionally be required to fly nonmember passengers and property from point to point where limited reimbursement is involved. They responded: "The FAA, however, finds that receiving reimbursement for transportation, whether directly from a source outside the USAF or from an outside source through the USAF, constitutes 'compensation,' and the flight becomes a commercial operation." They concluded that performing these missions, if permitted, would give CAP an unfair advantage over part 135 operators and would compromise public safety since a private pilot has not demonstrated to the FAA an appropriate level of skill and knowledge to conduct these types of operations.

b. The FAA exempted cadet orientation flights from the requirements of Part 135. This applies to both CAP cadets and ROTC cadets. These flights can be flown by private pilots who are designated as "cadet orientation pilots" in accordance with CAPR 60-1, and the private pilot can be reimbursed for qualifying expenses and can log his/her flight time.

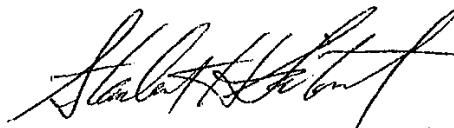
c. The FAA determined that Federally appropriated funds received by CAP under the cooperative agreement with the Air Force is not considered "compensation or hire."

d. The FAA determined that money received from an outside source (through an MOU or LOA), whether it is received directly from the outside source or through the USAF, would be considered "compensation." If this money is used to provide transportation, then the transportation may be considered a "commercial operation." They concluded: "Persons engaged in commercial operations, except those listed in § 119.1(e) or covered under an exemption, must hold an operator's certificate issued by the FAA."

3. Wading through the legal requirements of the FARs, the FAA's interpretations of their regulations, and our exemption is difficult. To aid commanders and the pilot community, I have developed a chart that summarizes the pilot requirements for each type of airborne mission we perform (Attachment 3). To help with understanding the chart, I have also attached the pertinent sections of the FARs (Attachment 4) and the cited FAA Interpretation 1997-23 (Attachment 5). The Interpretation was a response to the Confederate [now Commemorative] Air Force and described circumstances identical to those encountered by CAP's private pilots when flying A and reimbursed B missions.

4. Following this presentation to you, the senior leadership of CAP, this chart will be posted at the Operations area of the NHQ internet site and will be incorporated into CAPR 60-1 in the next revision.

5. While I believe the chart is self-explanatory, I welcome any questions you may have.



STANLEY H. LEIBOWITZ, Col, CAP
General Counsel

**PETITION BY CIVIL AIR PATROL
FOR EXEMPTION TO
FAR §61.113(a) AND FAR §119.1(a)(1)
AND MODIFICATION OF EXEMPTION NO. 6771A**

CIVIL AIR PATROL (CAP) submits this petition to the Administrator in accordance with 14 CFR §§11.61(b), 11.63 and 11.81 for a limited exemption from 49 CFR §§61.113(a) and 119.1(a)(1) and for modification of Exemption No. 6771A:

a. Contact Information:

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b. Sections of 14 CFR from which exemption is sought:

61.113(a), 119.1(a)(1), and modification of existing Exemption No. 6771A for 61.119(e).

c. Extent of relief sought and reasons:

1. Civil Air Patrol (CAP) is incorporated by Congress, 36 U.S.C. §§40301-40307, and designated as a voluntary civilian auxiliary of the Air Force when the services of the Civil Air Patrol are used by any department or agency in any branch of the Federal Government, 10 USC 9442.

2. CAP was formed during World War II and served as the volunteer auxiliary of the Army Air Corps, which included flying anti-submarine patrols off the coasts during 1942-3. In 1946 Congress gave CAP a Federal corporation charter. Pursuant to the charter, the purposes of CAP are:

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“(1) To provide an organization to –

(A) encourage and aid citizens of the United States in contributing their efforts, services, and resources in developing aviation and in maintaining air supremacy; and

(B) encourage and develop by example the voluntary contribution of private citizens to the public welfare.

(2) To provide aviation education and training especially to its senior and cadet members.

(3) To encourage and foster civil aviation in local communities.

(4) To provide an organization of private citizens with adequate facilities to assist in meeting local and national emergencies.

(5) To assist the Department of the Air Force in fulfilling its noncombat programs and missions.”

P.L. 106-398, effective 27 February 2001, added this last corporate purpose to the U.S. Code. In addition, P.L. 106-398 added a Board of Governors as the governing body of CAP. The eleven member Congressionally mandated Board of Governors consists of four members appointed by the Secretary of the Air Force (SAF), four members appointed by Civil Air Patrol and three members jointly appointed by the SAF and the National Commander of Civil Air Patrol from among personnel of any Federal Government agencies, public corporations, nonprofit associations and other organizations that have an interest and expertise in civil aviation and the Civil Air Patrol mission. 10 U.S.C. § 9447. These three members are currently the president of Tuskegee University,

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the FEMA Director of Operations and Planning Division Response, and an Executive Vice President of Flightsafety International Incorporated.

3. In 1948 Congress first designated CAP as an auxiliary of the US Air Force and authorized the Air Force to support CAP by providing Air Force personnel, equipment and funding. Section 1090 of P.L. 98-398, amended Chapter 909 of title 10, United States Code by, in effect, rescinding 10 U.S.C. §§ 9441 and 9442 and adding new §§ 9441-9448. In addition to defining the extensive support the SAF can provide to CAP in §9444, the statute declares that "The Secretary of the Air Force may use the services of the Civil Air Patrol to fulfill the noncombat programs and missions of the Department of the Air Force." 10 U.S.C. 9442(b)(1)

4. The new statute also provides at §9441(a)(2): "Except as provided in section 9442(b)(2) of this title, the Civil Air Patrol is not an instrumentality of the Federal Government for any purpose." §9442(b)(2) states: "The Civil Air Patrol shall be deemed to be an instrumentality of the United States with respect to any act or omission of the Civil Air Patrol, including any member of the Civil Air Patrol, in carrying out a mission assigned by the Secretary of the Air Force." In §9448(b)(1) the SAF is required to prescribe "regulations governing the conduct of the activities of the Civil Air Patrol when it is performing its duties as a volunteer civilian auxiliary of the Air Force under section 9442 of this title."

5. CAP's National Headquarters is located on Maxwell AFB, Alabama. CAP is organized into eight geographical regions and fifty-two wings, with a wing in every state plus the District of Columbia and the Commonwealth of Puerto Rico. CAP has 60,000 volunteer members of which 34,000 are adult members and 26,000 are cadets. CAP

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owns and operates 530 light, mostly single engine aircraft and several thousand member owned/furnished aircraft; 920 vehicles and 20,000 radio or communication stations. CAP has approximately 12,000 pilots, of which approximately 4,000 are currently CAP mission qualified.

6. In addition to being subject to the Federal Aviation Regulations, the CAP flying program is highly regulated under the provisions of CAP Regulations 60-1, 60-2, 60-3 and 60-4. After joining CAP, to be eligible to fly in the CAP program a pilot must pass a special CAP flight check, a written test on each aircraft in which he/she is qualified to fly, and a written test covering FAA and CAP flight rules. The check ride and written tests must be repeated every year to remain eligible to fly. Further, to qualify as a "CAP mission pilot", he/she must pass an oral review and special flight check covering areas specific to search and locate operations. This requirement must be met every two years. CAP conducts periodic flight clinics and flight mission training programs to maintain high standards of mission proficiency and safety. CAP members must fly in uniform and obtain a flight release from a trained flight release officer for each flight. (CAP on-line flight release course is available at <http://www.ntc.cap.gov/ops/fro/index.htm>)

7. CAP's flying missions are classified as (a) Air Force Assigned Missions and (b) Corporate Missions. The Air Force assigns a mission either by assigning it directly to CAP or by approving a Memorandum of Understanding (MOU) or Letter of Agreement (LOA) between CAP and another Federal, state or local governmental agency or Federally chartered Nongovernmental Organization. The Air Force Assigned Missions, which include training to perform the following missions, are:

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a. Search and Rescue. Each year CAP's volunteer search and rescue program flies 85% or more of all air search and rescue missions in this country resulting in saving of hundreds of lives and millions of dollars for the Air Force and the country. Operating under the direction of the Air Force Rescue Coordination Center (AFRCC) at Langley AFB, CAP flew 7,304 hours on actual search missions during 2000 and was officially credited with saving 77 lives.

b. Disaster Relief. CAP provides assistance to state and local communities in natural and man-made disasters. Working with the Air Force, FEMA, Red Cross, FAA and state officials, CAP has played important roles in the air and on the ground in major disasters such as Hurricane Andrew in Florida, the 1993 Midwest flooding where it controlled airspace for the FAA, a major train derailment in Eunice, LA on 27 May 2000, and the recent upper Midwest flooding. CAP provides the major flying resource in FAA's SARDA program (Reference FAA Advisory Circular No. 00-07D). Working with both Federal and state emergency management agencies, CAP provides a capability to capture real-time images of ground emergencies using airborne digital cameras, video cameras and infrared imaging. These are transmitted to ground stations and distributed on the internet to authorized users, providing real-time information useful to incident commanders.

c. Counterdrug Activities. CAP flies Air Force assigned missions for DEA, Customs, and the U.S. Forest Service, as well as state and local agencies. While CAP members do not carry weapons nor participate in arrests or seizure of drugs, these missions include reconnaissance and search and locate operations that have produced significant law enforcement results and savings, particularly in the marijuana eradication

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program conducted by DEA. CAP started with 3,000 flying hours during its first year of counterdrug operations in 1985 and has gradually expanded to a high of 39,000 hours in 1999. In addition, CAP supports the war on drugs by transporting federal, state and local law enforcement officials and working dogs when on official counterdrug business of their agencies and flown as Air Force Assigned Missions.

d. Aerial Surveys, and Reconnaissance. CAP, at the request of the sponsoring agency, performs environmental surveys of rivers, forests, and/or wildlife and reconnaissance of ground conditions and surface traffic.

e. Transportation of Human Organs and Tissue, and Emergency Equipment and Supplies. At the request of the sponsoring agency, in situations where alternative commercial means of transportation are not readily available, CAP transports human organs and/or tissue, including organs, bone marrow, blood, and serum, as humanitarian missions. In addition, in response to a Federal or state emergency, CAP provides light air and ground transport of medical supplies, shelters, etc.

f. Orientation Flights. Used as incentive flights to interest cadets in aviation in general and Air Force aviation specifically and to support the National Drug Demand Reduction Program, CAP flies CAP cadets on a series of orientation flights covering a specific syllabus. These flights are also conducted for AFROTC cadets who are also CAP members under an agreement with the Air Force.

6. On June 11, 1999, The Office of Management and Budget determined that the Air Force's funding/assistance relationship with CAP is governed by the Federal Grants and Cooperative Agreement Act, 31 U.S.C. §§6301-6308. Effective 1 October 2000

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CAP began receiving federal appropriated funding pursuant to a Cooperative Agreement signed by CAP and the SAF. Section 8031 of P.L. 106-259 provides the FY2001 CAP funding: "Of the funds made available in this Act, not less than \$21,417,000 shall be available for the Civil Air Patrol Corporation, of which \$19,417,000 shall be available for Civil Air Patrol Corporation operation and maintenance to support readiness activities which includes \$2,000,000 for the Civil Air Patrol counterdrug program: *Provided, That* funds identified for 'Civil Air Patrol' under this section are intended for and shall be for the exclusive use of the Civil Air Patrol Corporation and not for the Air Force or any unit thereof." These funds are used by CAP for operation and maintenance, including salaries and benefits of CAP employees, insurance, aircraft operating expenses for Air Force Assigned Missions paid for or reimbursed with Federal appropriated funds, and maintenance of the CAP aircraft fleet.

7. In addition to Federal appropriated funds described above, under approved MOUs or LOAs, CAP may receive payments approximating the actual operating costs of the aircraft (at the rates specified in CAP Regulation 173-3 as approved by the FAA) from the authorizing agencies.

8. Pursuant to a Joint Operating Agreement with the Air Force, CAP receives reimbursement from the Air Force (at the rates specified in CAP Regulation 173-3 as approved by the FAA) for each hour of orientation flight given to CAP members who are also AFROTC cadets.

9. In 1996 CAP received Exemption No. 6485, allowing CAP to operate a limited number of flights carrying passengers and property for limited reimbursement when those

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flights are within the scope of and incidental to CAP's corporate purposes and U.S. Air Force Auxiliary status. In our application we stated:

"CAP flies a total of approximately 130,000 hours each year of which 55,000 hours are flown on SAR/DR missions or Counterdrug missions. Other CAP mission flying includes AFROTC and cadet orientation flights and flight clinics; FEMA and Red Cross disaster assistance missions; FAA, state and local governments support missions. Proficiency and training missions are also included. All CAP flying is performed under Part 91 of the FARs with the exception of those flights for which the exemption is requested.

"While performing these missions, and incidental to and within the scope of those missions, CAP may occasionally be required to fly non-member passengers and property from point to point where limited reimbursement is involved. These occasional missions carrying passengers and property represent a small but vital part of CAP's missions and would not exceed an estimated 4,000 hours per year out of the total of 130,000. It is for these limited flights that CAP seeks the exemption under Subpart F. FAR 91.501.

Examples of such occasional passenger and property carrying may take place during a few of the following CAP missions: CAP's flying in FAA's SARDA program; organ and tissue delivery missions; state and local officials carried as passengers under certain parts of MOUs with CAP including counterdrug missions; CAP flying under agreements with

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FEMA and Red Cross to give immediate aid in the event of natural disasters.”

Although we feel these types of missions are still incidental to the overall purposes of CAP, recent discussions with FAA personnel indicate a need to specifically address this issue.

11. CAP seeks an exemption to 49 CFR §119.1(a)(1) such that Part 119 shall not apply to CAP Cadet and CAP/AFROTC Cadet Orientation Flights.

12. CAP seeks an exemption to 49 CFR §119.1(a)(1) such that Part 119 shall not apply to CAP for air carriage or commercial operation limited to the carriage of CAP members or employees, government employees or volunteers (to include Coast Guard Auxiliary), public safety officers (as defined in 42 U.S.C. § 3796(b)), or employees, members or volunteers of the American Red Cross (including all chartered units) when performing Air Force Assigned Missions.

13. CAP seeks a modification to Exemption No. 6771A to (i) make it an exemption to 49 CFR §61.113(a) instead of to §61.113(e) so that it will apply to more than “search and locate” flights, (ii) change the current requirement that the exemption applies only when CAP is operating as an instrumentality of the United States to having it apply only when CAP is operating as the Air Force Auxiliary, and (iii) add that CAP members holding a private pilot certificate may use CAP aircraft without charge and may log flight time when operating under the exemption.

14. CAP seeks an additional exemption to 49 CFR §61.113(a) to permit a private pilot to act as pilot in command of an aircraft that is carrying passengers

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or property for compensation when the pilot is a current CAP mission pilot on a flight or series of flights when operating as the Air Force Auxiliary and when the pilot receives no compensation except that permitted under CAP's exemptions to part 61.113(a).

15. In the alternative, CAP seeks a determination that the receipt of Federal appropriated funds by CAP pursuant to the Cooperative Agreement with the United States Air Force does not constitute "compensation or hire" or "commercial operation" for the purposes of Part 61 or Part 119 and that the receipt of funds from a state or local government entity pursuant to a Memorandum or Understanding or Letter of Agreement conferring Air Force Assigned Mission status on the flight does not constitute "compensation or hire" or "commercial operation" for the purposes of Part 61 or Part 119.

d. Reasons why granting requests would be in the public interest:

1. CAP has been chartered by Congress, as a patriotic and national organization for purposes that serve the public welfare. The complete review of the Federal statutes governing CAP's conduct in late 2000, including the addition of a new corporate purpose, is evidence that Congress still considers the contributions of CAP vital to the country's welfare. CAP performs no missions that do not serve the purposes of government or aid in emergency response. By regulation, CAP prohibits the use of CAP aircraft for personal use.

2. As the funding for the Air Force and the National Guard is reduced, the demand for CAP to perform noncombat missions of the Air Force has increased, in part because CAP can fly many of these missions at a cost of \$50 to \$80 per

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hour compared to thousands of dollars per hour for Air Force and National Guard aircraft. This makes performance of these noncombat missions far more cost effective for the taxpayer.

3. CAP flies about 85 percent of all search and locate missions; provides assistance to Federal, state and local governments during natural and man-made disasters; conducts counterdrug operations for the DEA, U.S. Forest Service, and U.S. Customs Service as well as for various state agencies by flying aircraft patrol and reconnaissance missions. These missions save lives, mitigate property damage, support public policy, save taxpayer dollars, and enhance public agency's' ability to carry out their missions and purposes.

4. CAP's cadet orientation flights help provide motivated recruits for the Air Force and the other uniformed services of the United States, promote careers in civil aviation, and contribute to the nations' efforts to reduce drug demand.

c. Reasons why granting the exemptions would not adversely affect safety, or how the exemptions would provide a level of safety at least equal to that provided by the rule from which CAP seeks exemption: CAP's flying program operates at an extremely high level of safety that exceeds that of general aviation. During the period 1997-2000 CAP's aviation accident rate was 3.05 per 100,000 hours of flying compared with 6.91 for general aviation. CAP mission pilots are required to have a minimum of 200 hours pilot-in-command time with at least 50 hours of cross country time, and must take annual flight and written tests and biennial mission pilot flight tests. Each flight must be released by a qualified Flight Release Officer and must be on a CAP or FAA flight plan.

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Cadet orientation pilots must also have at least 200 hours pilot-in-command time and, for orientation flights for AFROTC cadets who are also CAP cadets, 500 hours pilot-in-command time. To promote safety, CAP operations are limited beyond the requirements of the Federal Aviation Regulations so that, for example, only civilian airports listed in the current FAA Airport/Facility Directory may be used without prior written permission of an appropriate CAP official and activities such as acrobatic flight, parachuting activities and flying in air shows are prohibited. CAP aircraft are maintained in accordance with FAR Parts 43 and 91.

f. Summary for publication in the Federal Register. Civil Air Patrol (CAP), incorporated by Congress in 1946 and designated as a voluntary civilian auxiliary of the Air Force when the services of the Civil Air Patrol are used by any department or agency in any branch of the Federal Government, seeks a limited exemption from 49 CFR §§ 91.113(a) and 119.1(a)(1) and for modification of Exemption No. 6771A. CAP seeks an exemption from 49 CFR § 119.1(a)(1) such that Part 119 shall not apply to CAP Cadet and CAP/AFROTC Cadet orientation flights. Such flights do not fall into any of the existing exemptions of 49 CFR §119.1(e) but are similar in nature to flight instruction, sightseeing, and air operations flights.

CAP receives most of its funding through Congressional appropriations administered by the Air Force through a cooperative agreement pursuant to 31 U.S.C. §§ 6301-6308. Additional funding is provided by state and local governmental agencies under Memoranda of Agreement and Letters of

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Agreement, approved by the Air Force and conferring Air Force Assigned Mission status to these operations. These operations are conducted under regulations issued by the Secretary of the Air Force pursuant to 10 U.S.C. § 9448. CAP seeks exemption to 49 CFR § 119.1(a)(1) such that Part 119 shall not apply to CAP for air carriage or commercial operation limited to the carriage of CAP members or employees, government employees or volunteers (to include Coast Guard Auxiliary), public safety officers (as defined in 42 U.S.C. § 3796(b)), or employees, members or volunteers of the American Red Cross (including all chartered units) when performing Air Force Assigned Missions.

CAP seeks a modification to Exemption No. 6771A to (a) make it an exemption to 49 C.F.R. § 61.113(a) instead of to § 61.113(e) so that it will apply to flights other than "search and locate" missions, (b) change the current requirement that the exemption applies only when CAP is operating as an instrumentality of the United States to having it apply only when CAP is operating as the Air Force Auxiliary, and (c) add that CAP members holding a private pilot certificate may receive use of CAP aircraft without charge and may log flight time when operating under the exemption.

CAP seeks an additional exemption to 49 C.F.R. § 61.113(a) to permit a private pilot to act as pilot in command of an aircraft that is carrying passengers or property for compensation when the pilot is a current CAP mission pilot on a flight or series of flights when operating as the Air Force Auxiliary and when the pilot receives no compensation except that permitted under CAP's Exemption No. 6771(A), as modified by this petition.

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CAP states that approving this petition is in the public interest and that CAP has a flight safety record over the past four years of less than one-half the accident rate of general aviation. CAP does not seek to exercise the privileges of these exemptions outside the United States.

g. Additional information, views, or arguments to support CAP's request. None

h. Exercise of the privileges of these exemptions outside the United States. CAP does not seek to exercise the privileges of these exemptions outside the United States.

Based on the foregoing, CAP respectfully urges the prompt processing and approval of this petition.

Submitted this _____ day of June, 2001

CIVIL AIR PATROL

By _____

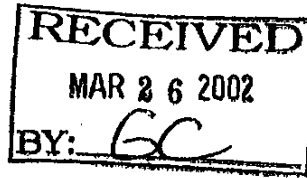
ROBERT L. BROOKS
Colonel, CAP
Executive Director

Attachments:

36 U.S.C. §§40301-40307
10 U.S.C. §§9441-9448
P.L. 106-259 §8031
CAPR 60-1, 60-2, and 60-3
USAF/GC and OMB Determination Letter
Cooperative Agreement (with SOW)
CAPF 77
CAP-AFROTC Joint Operating Agreement
2000 Annual Report to Congress



U.S. Department
of Transportation
**Federal Aviation
Administration**



800 Independence Ave., S.W.
Washington, D.C. 20591

MAR 19 2002

Exemption No. 6771B
Regulatory Docket No. FAA-2001-9874

COL Robert L. Brooks
Executive Director
Civil Air Patrol
105 South Hansell Street
Maxwell Air Force Base, AL 36112-6332

COL Stanley H. Leibowitz
General Counsel
Civil Air Patrol
105 South Hansell Street
Maxwell Air Force Base, AL 36112-6332

Dear Colonel Brooks and Colonel Leibowitz:

This is in response to your June 7, 2001, letter and July 30, 2001, supplemental information petitioning the Federal Aviation Administration (FAA) on behalf of the Civil Air Patrol (CAP) for an amendment to Exemption No. 6771, as amended. That exemption from § 61.113(e) of Title 14, Code of Federal Regulations (14 CFR) permits the CAP to reimburse CAP members who are private pilots for fuel, oil, supplemental oxygen, fluids, lubricants, preheating, deicing, airport expenses, servicing, and maintenance expenses, and certain per diem expenses incurred while serving on official U.S. Air Force (USAF)-assigned CAP missions. The amendment you request would grant relief from § 61.113(a) rather than § 61.113(e) so that the exemption applies to CAP missions other than search and location missions. In addition, you request relief from 14 CFR § 119.1(a)(1) to permit certain CAP operations, including CAP/Air Force Reserve Officers' Training Corps (AFROTC) cadet orientation flights.

In your petition, you indicate that the conditions and reasons regarding public interest and safety, presented in the original petition upon which the exemption was granted, remain unchanged.

A summary of the petition was published in the Federal Register on October 25, 2001, (66 FR 54055). No comments were received.

Please note the FAA has assigned a new docket number to this project (Docket No. FAA-2001-9874; previously Docket No. 29188). In an effort to allow the public to participate in tracking the FAA's rulemaking activities, we have transitioned to the

AFS-01-472-E

Attachment 2

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Department of Transportation's Internet-accessible Docket Management System (DMS), located at <http://dms.dot.gov>. This new docket system enables interested persons to view requests on, submit requests to, and download requests from the DMS in accordance with 14 CFR § 11.63. Future requests should be submitted through the DMS.

The FAA has determined that the justification for the issuance of Exemption No. 6771, as amended, remains valid. Therefore, the FAA has extended the duration of the exemption to May 31, 2004. In addition, the FAA has reviewed the information in support of your request for an amendment and has determined that the circumstances justify a partial grant of exemption.

I. Background

On March 31, 1998, the CAP petitioned the FAA for an exemption from § 61.113(e). The CAP's petition requested that the exemption apply to USAF-assigned missions when operating as an instrumentality of the United States and to CAP corporate missions. The CAP also requested that the following persons be permitted to be aboard the aircraft during operations under the exemption: pilot crewmembers who are officially authorized by the CAP, CAP members, members of the U.S. armed services, and government employees or personnel who are officially authorized by the CAP to aid in the performance of the approved flight activity.

In response, on May 28, 1998, the FAA issued a partial grant of exemption (Exemption No. 6771) to the CAP. That exemption from § 61.113(e) allows the CAP to reimburse CAP members who are private pilots for fuel, oil, supplemental oxygen, fluids, lubricants, preheating, deicing, airport expenses, servicing, and maintenance expenses, and certain per diem expenses incurred while serving on official USAF-assigned CAP missions subject to certain conditions and limitations. Under that exemption request, the FAA also determined that "when the CAP is conducting non-USAF-assigned missions (corporate missions), the CAP is not an instrumentality of the United States. Consequently, the FAA has determined that it is not in the public interest to allow the same reimbursement for corporate missions operated under this exemption."

As previously noted, under the CAP's current petition at issue, the CAP requests to change the relief granted under Exemption No. 6771, as amended, from § 61.113(e) to § 61.113(a) so the exemption will apply to more than search and location flights and to grant relief from § 119.1(a)(1) to permit CAP/AFROTC cadet orientation flights.